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11 **Attorneys for Petitioner**

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF ARIZONA**

14 **NATIONAL LABOR RELATIONS**  
15 **BOARD**

16 **Applicant,**

17 **v.**

18 **AMERICAN MEDICAL RESPONSE,**  
19 **INC.**

20 **Respondent.**

21 **Case No.**

22 **MEMORANDUM OF POINTS AND**  
23 **AUTHORITIES IN SUPPORT OF**  
24 **APPLICATION FOR ORDER TO**  
25 **SHOW CAUSE AND ORDER**  
26 **REQUIRING COMPLIANCE WITH**  
27 **SUBPOENA DUCES TECUM**  
28 **PURSUANT TO SECTION 11(2) OF**  
**THE NATIONAL LABOR**  
**RELATIONS ACT, AS AMENDED (29**  
**U.S.C. § 161(2))**

21 This memorandum is submitted in support of the Application for Order to Show  
22 Cause and Order Requiring Compliance with Subpoena Duces Tecum Pursuant to  
23 Section 11(2) of the National Labor Relations Act, as Amended (the Act) (29 U.S.C. §  
24 161(2)), filed by the National Labor Relations Board (the Board) on January 30, 2017,  
25 and served on Respondent American Medical Response, Inc. (Respondent) on January  
26 31, 2017 (the Application). The Application seeks an Order to Show Cause requiring  
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Respondent to appear before this Court and show cause, if any there be, why an Order should not issue directing Respondent to comply with the subpoena duces tecum (the subpoena) issued to it by the Board, as required by the Board Order dated January 8, 2018. The Application further seeks, upon the return of the Order to Show Cause, an Order directing Respondent to comply with the subpoena by providing responsive documents to the subpoena to the Board within one (1) week of such Order pursuant to a matter now pending before the Board, *American Medical Response, Inc.*, Board Case 28-CA-188389.

## **I. BACKGROUND**

### **A. The Underlying Board Charge**

On November 16, 2016, the General Teamsters (Excluding Mailers), State of Arizona, Local Union No. 104, an affiliate of the International Brotherhood of Teamsters (the Union) filed the charge in Case 28-CA-188389 (the charge), alleging that the Employer violated Section 8(a)(1) and (3) of the Act, 29 U.S.C. §158(a)(1) and (3), by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, including but not limited to, discriminating against its employees, including but not limited to, discharging its courier employees James Howard (Howard), Tom Hussey (Hussey), and Randy Medeiros (Medeiros) (collectively, the couriers), because they engaged in concerted activities and union activities. Additionally, the charge alleged that the Employer violated Section 8(a)(5) of the Act, 29 U.S.C. §158(a)(5), by making unilateral changes in wages, hours and terms and conditions of employment without notifying the Union or giving the Union the opportunity to

1 meaningfully bargain over the effects, after the Union requested voluntary recognition  
2 and established a majority support, when the above-named Employer outsourced the jobs  
3 of the couriers and shut down the unit. (See App. Exh. A)

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5 B. Issuance of the Subpoena Duces Tecum to Respondent

6 On January 30, 2017, Cornele A. Overstreet, Regional Director of Region 28  
7 (Regional Director) of the Board, on behalf of the Board, issued the subpoena, and, on  
8 January 31, 2017, personally served it on Respondent, with a courtesy copy to  
9 Respondent's counsel by e-mail, all in the manner and form provided for in Section 11(1)  
10 of the Act, 29 U.S.C. § 161(1), and in Section 102.31(a) of the Rules. (See App. Exh. B)

12 On February 6, 2017, Respondent filed a Petition to Revoke Subpoena Duces  
13 Tecum No. B-1-V77GZZ (Petition to Revoke). (See App. Exh. C)

15 On February 28, 2017, the Board agent filed an Opposition to Respondent's  
16 Petition to Revoke. (See App. Exh. D)

18 On January 8, 2018, the Board issued an Order denying Respondent's Petition to  
19 Revoke in its entirety (the Board Order). (See App. Exh. E)

20 On January 8, 2018, the Board agent e-mailed Respondent's counsel, attaching a  
21 copy of the Board Order, requesting Respondent produce responsive document's to the  
22 subpoena as required by the Board Order, by 4:45 p.m. (Phoenix local time) on January  
23 16, 2018. (See App. Exh. F) To date, Respondent has failed to provide responsive  
24 documents to the subpoena, or as required by the Board Order, or at any time thereafter.

26 The subpoena and the Board Order were issued in the manner and form prescribed  
27 by Section 11(1) of the Act, 29 U.S.C. § 161(1), and Section 102.31(a) of the Board's  
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Rules and Regulations, Series 8, as amended (the Board's Rules), 29 C.F.R. § 102.31(a), and were served in a manner permitted by Section 102.113 of the Board's Rules, 29 C.F.R. § 102.113(c).

## II. ARGUMENT

### A. Legal Standards

Through Section 11 of the Act, 29 U.S.C. § 161, Congress granted to the Board and its agents broad investigatory authority, including the power to subpoena any evidence "that relates to any matter under investigation or in question." 29 U.S.C. § 161(1); *see also NLRB v. Interstate Material Corp.*, 930 F.2d 4, 6 (7th Cir. 1991) (describing the Board's broad subpoena power); *NLRB v. Steinerfilm, Inc.*, 702 F.2d 14, 15 (1st Cir. 1983) (same); *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 114 (5th Cir. 1982) (same). This broad subpoena power enables the Board "to get information from those who best can give it and who are most interested in not doing so." *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950). Thus, such subpoena may be directed to any person having information relevant to an investigation. *See, e.g., Link v. NLRB*, 330 F.2d 437, 440 (4th Cir. 1964). Moreover, "[f]or purposes of an administrative subpoena, the notion of relevancy is a broad one. . . . So long as the material requested 'touches a matter under investigation,' an administrative subpoena will survive a challenge that the material is not relevant." *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875, 882 (5th Cir. 1989).

Under Section 11(2) of the Act, 29 U.S.C. § 161(2), district courts have jurisdiction to enforce subpoenas issued by the Board "upon application of the Board."

1 Courts have held that subpoena enforcement proceedings need not be commenced by  
2 service of a summons and complaint normally required to commence a civil suit pursuant  
3 to Rule 4 of the Federal Rules of Civil Procedure. *See, Goodyear Tire & Rubber Co. v.*  
4 *NLRB*, 122 F.2d 450, 451 (6th Cir. 1941); *Cudahy Packing Co. v. NLRB*, 117 F.2d 692,  
5 694 (10th Cir. 1941).

7 District courts are to enforce subpoenas issued by the Board pursuant to Section  
8 11(1), if they find “that a proceeding is pending before the Board of which it has  
9 jurisdiction and the evidence sought relates to or touches the matter under investigation.”  
10 *NLRB v. Dutch Boy, Inc.*, 606 F.2d 929, 932 (10th Cir. 1979). In an opinion issued by the  
11 Seventh Circuit Court of Appeals, *NLRB v. Williams*, 396 F. 2d 247, 249 (7th Cir. 1968),  
12 reversing a district court’s refusal to enforce a Board subpoena, the court noted:  
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15 We reverse. The Supreme Court in two cases, *Endicott Johnson Corp. v.*  
16 *Perkins*, 317 U.S. 501, 63 S. Ct. 339, 87 L. Ed. 424, 2 WH Cases 55, and  
17 *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 66 S. Ct. 494, 90  
18 L. Ed. 614, 5 WH Cases 864, set forth the standards governing judicial  
19 enforcement of administrative subpoenas. Duly issued subpoenas are to be  
20 enforced if the agency is seeking information “not plainly incompetent or  
21 irrelevant to any lawful purpose.” *Endicott Johnson Corp. v. Perkins*, supra,  
22 317 U.S. at 509, 63 S. Ct. at 343, 2 WH Cases 55. And the essential  
23 requirement for both the issuance and enforcement of a National Labor  
24 Relations Board subpoena is that the production of the evidence or the  
25 giving of the testimony called for by the subpoena must relate to a “matter  
26 under investigation or question.” The evidence or testimony sought must  
27 touch upon the matter under investigation or in question. Section 11(1) and  
28 11(2) of the Act; *N.L.R.B. v. Rohlen*, 7 Cir., 385 F.2d 52, 55-56.

25 See also *Cudahy Packing Co. v. NLRB*, 117 F.2d 692, 694 (10th Cir. 1941):

26 The only limitation upon the power of the Board to compel production of  
27 documentary or oral evidence is that it must relate to or touch the matter  
28 under investigation or in question. The Board may not go beyond this  
limitation and pry into the affairs of a business concern generally.

1 When an application is filed with a District Court for an order requiring  
2 obedience to a subpoena it may inquire only to ascertain that a proceeding  
3 is pending before the Board of which it has jurisdiction and the evidence  
4 sought relates to or touches the matter under investigation. If these facts are  
found to exist, it is the duty of the court to order obedience to the subpoena.

5 The only defenses that a respondent may assert in such a proceeding are that the  
6 proceeding in which the evidence is sought is not one of which the Board has  
7 jurisdiction or that the evidence does not relate to or touch the matter under  
consideration.

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9 B. The Subpoena Should Be Enforced

10 As found in the Board Order denying Respondent's Petition to Revoke, the  
11 "subpoena seeks information relevant to the matters under investigation and describes  
12 with sufficient particularity the evidence sought, as required by Section 11(1) of the Act  
13 and Section 102.31(b) of the Board's Rules and Regulations." (See App. Exh. E) The  
14 Board's rationale for seeking the documents in the subpoena is detailed in the Opposition  
15 to Respondent's Petition to Revoke. (See App. Exh. D) Respondent should be required  
16 to provide the Board with documents responsive to the subpoena, as required by the  
17 Board Order.  
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20 **III. CONCLUSION**

21 Respondent's failure to provide documents responsive to the subpoena constitutes  
22 contumacious conduct within the meaning of Section 11(2) of the Act, 29 U.S.C. §  
23 161(2), which conduct has impeded the Board in the investigation of the matters before it,  
24 and has prevented the Board from carrying out its duties and functions under the Act.  
25 Based on the foregoing, it is respectfully requested that this Court issue an Order to Show  
26 Cause, and, upon return of that Order, issue an Order enforcing the subpoena and  
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1 requiring Respondent to provide documents responsive to the subpoena to the Board  
2 within one (1) week of such Order.

3 Dated at Phoenix, Arizona, this 31st day of January 2018.

6 NATIONAL LABOR RELATIONS BOARD

7  
8 /s/ Sara Demirok

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